

Post 2006 Initiative

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this "Agreement") is entered into as of May ____, 2004 between and among the signatory stakeholder participants (the "Parties") in the _____ Working Group (the "Working Group") of the Post-2006 Initiative and their signatory Representatives.

Recitals

A. The Working Group provides interested parties with the opportunity to discuss issues relating to the provision of electric power and energy in Illinois after the end of the Mandatory Transition Period established by Article XVI of the Illinois Public Utilities Act (the "Act"). The Post-2006 Initiative is an opportunity for stakeholders to participate in various workshops and identify issues and concerns in conjunction with the goal of the Illinois Commerce Commission to promote the viability of the electric markets and protect the interests of consumers.

B. In Order to facilitate free and open discussions the parties wish to assure that statements made, positions taken documents and papers provided by the parties in the Post 2006 Initiative Process will not be used by the Parties in any subsequent litigation, including administrative proceedings before the Illinois Commerce Commission, the Federal Energy Regulatory Commission, and other federal, state, or local governmental authorities ("future proceedings").

C. It is reasonably foreseeable that issues discussed in Working Group sessions and in written material circulated among Working Group participants will or may become the subject of future proceedings. Meetings of the Working Group are being conducted for the purpose of defining the critical post-transition issues and determining how best to meet the requirements of the Act and the legitimate needs of all participants in the Illinois retail and wholesale electric markets, including electric utilities, alternative retail electric suppliers, consumers, independent power producers, and others. It is also hopeful that the Working Group sessions will resolve or narrow issues that might otherwise be the subject of the above proceedings.

D. The Parties have determined that it is in their best interests to share certain Confidential Information (defined below) in the context of such discussions, and have agreed to jointly protect and defend their interests in any future proceedings. The Parties understand that all discussions and information distributed during Working Group meetings shall be used for the purposes identified above, which may include the narrowing and potential settlement of issues, and the Parties therefore understand that information received through the Working Group process will not be admissible as evidence during the course of any future proceedings.

E. The Parties desire that Confidential Information furnished by or on behalf of one Party or learned from that Party in connection with the Working Group (1) be kept confidential and not disclosed without the permission of the Party from whom such Confidential Information is furnished or learned, or about whom the Confidential Information pertains, except as set forth in Paragraph 2 herein; (2) not be used for any purpose other than is necessary in connection with the Working Group; and (3) be returned or destroyed at the conclusion of the Post-2006 Initiative.

Agreement

The Parties, in consideration of the premises and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

1. **Definitions.**

a. The term "Confidential Information" means all information and material furnished by or on behalf of a Party in connection with the Working Group, whether of a technical, engineering, operational or economic nature, including, but not limited to, technical and business information, business plans, client identities, customer lists, personnel and financial data, supplier identities and terms, contract terms, price quotes, savings estimates, supply strategies, computer software and methodologies, formulas, compilations and studies, which such Party designates as "Confidential," whether oral or written, or otherwise, and regardless of the manner or form in which it is furnished or learned, as well as all notes, memoranda, summaries, analyses, compilations and other writings reflecting such information or material; provided however that "Confidential Information" does not include information that (i) is or becomes generally available to the public other than as a result of an unauthorized disclosure by a Party or its Representatives, (ii) was available to a Party on a non-confidential basis prior to its disclosure by another Party or its representative, (iii) becomes available to a Party on a non-confidential basis from a person other than another Party or another Party's Representative who has no obligation not to transmit the information disclosed to the Party, or (iv) is independently developed by the Party or its Representative without the use, directly or indirectly, of Confidential Information.

b. The term "Representative" means, as to any Party, such Party's affiliates, directors, officers, employees, agents, advisors (including, without limitation, financial and technical advisors, legal counsel and accountants), and lenders or potential lenders or funding sources, while acting in such capacity. The terms "Representative" shall be broadly interpreted to include, without limitation, any corporation, partnership, joint venture, limited liability company, joint stock company, trust, or other legal entity, and governmental authority, any individual, or any unincorporated business association.

2. Use of Confidential Information. Except as required by applicable law, regulation, rule, legal process, and unless otherwise agreed to in advance in writing by the Party designating the information as Confidential, each Party agrees to: (i) keep all Confidential Information confidential and not to disclose or reveal any Confidential Information to any person who is not a signatory to this Agreement; and (ii) not use Confidential Information for any purpose other than in connection with the defense or protection of the interests of the Party or its affiliate in the Working Group and not for any other purpose, including, without limitation, any business or commercial purpose, to compete, or assist any entity in competing, with any Party or its affiliates or for use in any manner whatsoever. Each Party and signatory to this Agreement will treat all Confidential Information with reasonable care and use all commercially reasonable efforts to prevent both the unauthorized disclosure and the unauthorized use of Confidential Information.
3. Request or Requirement to Disclose. In the event a Party is requested pursuant to, or required by, applicable law, regulation, rule or legal process to disclose any Confidential Information ("the Disclosing Party"), the disclosing party agrees to provide the Party from whom such Confidential Information was obtained or about whom such Confidential Information pertains (the "Non-disclosing Party") with prompt notice of such request or requirement as soon as reasonably possible, and will in good faith consult with and consider the suggestions of the Non-disclosing Party concerning the nature and scope of the disclosure. The Non-disclosing Party may seek an appropriate protective order or other remedy, may consult with the Disclosing Party with respect to steps it will or may take to resist or narrow the scope of such request or legal process, or may waive compliance, in whole or in part, in its sole discretion, with the terms of this Agreement. The Disclosing Party agrees to cooperate with the Non-disclosing Party and not to oppose any action by the Non-disclosing Party to obtain a protective order or other appropriate remedy. In the event that no such protective order or other remedy is obtained, or that the Non-disclosing Party waives compliance with the terms of this Agreement, the Disclosing Party agrees to furnish only that portion of the Confidential Information that is legally required to be furnished. In any such event, the Disclosing Party will use its reasonable best efforts to ensure that all Confidential Information and other information that is so disclosed will be accorded confidential treatment.

4. Continuing Obligation. This Agreement applies to all exchanges of Confidential Information relating to the Working Group between the Parties before and after execution of this Agreement. All obligations under this Agreement shall continue in effect notwithstanding any conclusion or resolution of the Working Group. All Confidential Information shall remain the property of the Party from whom it was furnished or learned, or about whom the Confidential Information pertains.
5. Return or Destruction of Confidential Information. No later than thirty (30) business days after conclusion of the Working Group, each Party (including all of its Representatives who are signatories to this Agreement) will (i) destroy all such Confidential Information and certify such destruction to the other Parties, or (ii) return all copies of Confidential Information that it holds or that were furnished by any other Party providing Confidential Information. Notwithstanding the return or destruction of Confidential Information, each Party and its Representatives will continue to be bound by their obligations hereunder.
6. Inquiry Regarding Unauthorized Release of Confidential Information. To the extent it deems it necessary, any Party may make a reasonable inquiry into facts required to establish compliance with the terms of this Agreement (the "Requesting Party"), and each other Party agrees to furnish the Requesting Party with the information that is reasonably necessary to conduct such an inquiry. Each Party agrees to promptly notify each other Party of any unauthorized disclosure or use of Confidential Information of which it becomes aware, and endeavor to prevent any further disclosure or use.
7. Inadequate Legal Remedy. The Parties recognize and acknowledge the competitive value of the Confidential Information and the damage that could result to a Party if the Confidential Information were used or disclosed except as authorized by this Agreement. The Parties agree that no adequate remedy is available at law for a breach of this Agreement and that, in addition to any other remedies available, performance of this Agreement may be specifically ordered or a breach hereof may be enjoined or both. Each Party will be responsible for any violation of the terms of this Agreement resulting from the acts or omissions of any of its Representatives. Additionally, signatories shall be personally liable for his/her violations of the terms of this Agreement.
8. Governing Law. The validity, performance, and construction of this Agreement shall be governed and interpreted in accordance with the laws of the State of Illinois. Any controversy or claim arising from or relating to this Agreement shall be settled in accordance with the express terms of this Agreement by a court located in Chicago, Illinois.

IN WITNESS WHEREOF, the undersigned have executed this Confidentiality Agreement as of the date first above written.

[Party]

By:

Name:

Title:

The undersigned persons are Representatives of [Party] in the Working Group who, by signature below, agree to be bound by the terms of this Agreement.

Printed Name

Signature

Printed Name

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